

Attorney Docket No. 3220-73090
Application No. 10/616,564 (Filed July 10, 2003)
Reply to Office Action dated January 3, 2007

REMARKS

Claims 1-27 were pending in the subject patent application before this amendment. Claims 1, 7, 12, 17, 22, 23, 25, and 26 have been amended. Claims 2 and 8 are canceled herein without prejudice or disclaimer of the subject matter therein. Thus, claims 1, 3-7, and 9-27 are pending in the subject application after this amendment.

Applicants acknowledge the examiner's indication that claim 27 is allowed and 2 and 8 would be allowed if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 1, 7, and 12 are amended herein to correct a spelling error.

Independent claims 1, 7, 12, 17, 22, 23, and 25 are amended herein to include an "outputting said measurement" step. Accordingly, withdrawal of the 35 U.S.C. § 101 rejection of claims 1-25 is in order, and therefore respectfully requested.

Reconsideration of the rejection of claims 1, 7, 11, 12, 16, and 26 under 35 U.S.C. 102(b) as being anticipated by U.S. Pat. No. 6,236,048 to Ditmarsen et al. ("Ditmarsen") is requested. It is believed that amended independent claims 1, 7, 12, and 26, and dependent claims 11 and 16, are not anticipated by Ditmarsen for the reasons given below.

Claim 1 has been amended to include the limitation of claim 2, which the examiner has indicated to be allowable. Claim 7 has been amended to include the limitation of claim 8, which the examiner has indicated to be allowable. Regarding Claim 12, Ditmarsen does not disclose or suggest that "said quantification algorithm includes dividing a first wavelength band integrated absorbance value by a reference wavelength band integrated absorbance value in which said milk fat does not substantially absorb said infrared electromagnetic radiation." Regarding claim 26, Ditmarsen does not disclose or suggest "a detector operable to detect the intensity of infrared electromagnetic radiation passing through said food product containing said organic substance in a range of wavelengths corresponding to one of said infrared

absorption bands and a range of wavelengths corresponding to one of said reference wavelength bands to provide electrical signals corresponding thereto.” Accordingly, applicants respectfully submit that amended independent claims 1, 7, 12, and 26, and dependent claims 11 and 16, are not anticipated by Ditmarsen, and hence withdrawal of the 35 U.S.C. 102(b) rejection thereof is respectfully requested

Claims 3-6 depend from claim 1, and therefore patentably distinguish over Ditmarsen for the reasons given above in support of claim 1. Further, Passaloglou-Emmanouillidou is neither proffered for, nor does it overcome, the above-mentioned deficiencies of Ditmarsen. Therefore, applicants submit that claims 3-6 patentably distinguish over Ditmarsen in view of Passaloglou-Emmanouillidou, and hence withdrawal of the 35 U.S.C. 103(a) rejection thereof is respectfully requested.

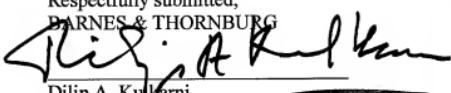
Claims 9-10 depend from claim 7, and therefore patentably distinguish over Ditmarsen for the reasons given above in support of claim 7. Further, Passaloglou-Emmanouillidou is neither proffered for, nor does it overcome, the above-mentioned deficiencies of Ditmarsen. Therefore, applicants submit that claims 9-10 patentably distinguish over Ditmarsen in view of Passaloglou-Emmanouillidou, and hence withdrawal of the 35 U.S.C. 103(a) rejection thereof is respectfully requested.

In view of the foregoing amendment and supporting remarks, the subject application is now deemed to be in condition for allowance, and such action is respectfully requested. If the Examiner believes that a telephonic interview would expedite the allowance of this application, he is requested to contact the undersigned for a prompt resolution of any outstanding issues.

It is respectfully requested that, if necessary to effect a timely response, this paper be considered as a Petition for an Extension of Time sufficient to effect a timely response, and shortages and other fees be charged, or any overpayment in fees be

credited, to the Account of Barnes & Thornburg, Deposit Account No. 10-0435, with reference to file 3220-73090.

Respectfully submitted,
BARNES & THORNBURG



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